



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/635,962	08/07/2003	Larry E. Hieb	065618.0109	1238

7590 10/13/2006

Roger Fulghum  
Baker Botts, L.L.P.  
One Shell Plaza  
910 Louisiana  
Houston, TX 77002

EXAMINER

BUTLER, MICHAEL E

ART UNIT PAPER NUMBER

3653

DATE MAILED: 10/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/635,962

Applicant(s)

HIEB, LARRY E.

Examiner

Michael Butler

Art Unit

3653

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 June 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office Action, and apply to this and any subsequent Office Actions.

#### ***Priority***

1. Applicant's claim of priority to application 60/401959 filed 08/08/2002 is acknowledged.

#### ***Drawings***

2. The drawings are acceptable.

#### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

- (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States
- (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

4. Claims 1-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Kovens et al.

(US 6179161) which discloses all the claimed elements including:

(Re: cl 1) A vending machine, comprising:

a housing for storing products to be dispensed (10/12/19);  
a product dispensing assembly comprising a dispenser for holding and dispensing products, wherein the dispenser has an open side and is mounted substantially horizontally within the housing and rotatable about an axis (c7 L 1-65),  
wherein the dispenser uses a retractable gauge step adaptable to vend products of various sizes, a product chute for receiving products when dispensed by the dispenser; and a motor coupled to the dispenser for rotating the dispenser (col 7 L 29-50)

(Re: cl 2) the retractable gauge step is substantially permanently affixed to the product dispensing assembly (col 7 L 1-65)

Art Unit: 3653

(Re: cl 3) the retractable gauge step adaptable to being in a first position where the gauge step is extended to create a gauge step to support the product resting in the product dispensing assembly (col 7 L 1-65)

(Re: cl 4) wherein the retractable gauge step is adaptable to being in a second position where the gauge step is retracted such that the gauge step does not support the product resting in the product dispensing assembly (col 7 L 1-65)

(Re: cl 5) wherein the retractable gauge step is operable to slide from a first position where the gauge step is extended to create a gauge step to support the product resting in the product dispensing assembly to a second position where the gauge step is retracted such that the gauge step does not support the product resting in the product dispensing assembly (col 8 L 1-21)

(Re: cl 6) wherein the retractable gauge step comprises a plurality of detents operable to hold the gauge step in the first position (col 8 L 1-21)

(Re: cl 7) the retractable gauge step comprises a plurality of detents operable to hold the gauge step in the second position (col 8 L 1-21)

(Re: cl 8) wherein the product dispensing assembly has a plurality of cutout slots and the retractable gauge step has a plurality of hooks, wherein the cutout slots and the hooks are coupled such that the gauge step and the dispensing assembly are substantially permanently affixed to each other (c7 L 1-65; FIG 6/12 )

(Re: cl 9) the retractable gauge step is further adaptable to being in a plurality of positions where the gauge step is extended to create a plurality of gauge steps to support the products resting in the product dispensing assembly (col 7 L 1-65)

(Re: cl 10) wherein the retractable gauge step is further adaptable to being in a plurality of positions where the gauge step is retracted such that the gauge step does not support the products resting in the product dispensing assembly (Col 7 L 1-65; FIG 6/12)

(Re: cl 11) the retractable gauge step is operable to slide from a plurality of positions where the gauge step is extended to create a plurality of gauge steps to support the product resting in the product dispensing assembly to a plurality of positions where the gauge step is retracted such that the gauge step does not support the products resting in the product dispensing assembly (col 7 L 1-65; FIG 6/12)

(Re: cl 12) A method for dispensing products from a vending machine, comprising the steps of: storing products in a product dispensing assembly, employing a retractable gauge step for supporting products stored in the product dispensing assembly (c7 L 1-65), wherein the retractable gauge step is adaptable to dispense products of various sizes; and dispensing products from the dispensing assembly in a sequential manner (col 7 L 29-50)

(Re: cl 13) the retractable gauge step is substantially permanently affixed to the product dispensing assembly (col 7 L 1-65)

(Re: cl 14) the retractable gauge step adaptable to being in a first position where the gauge step is extended to create a gauge step to support the product resting in the product dispensing assembly (col 7 L 1-65)

(Re: cl 15) wherein the retractable gauge step is adaptable to being in a second position where the gauge step is retracted such that the gauge step does not support the product resting in the product dispensing assembly (col 7 L 1-65)

Art Unit: 3653

(Re: cl 16) wherein the retractable gauge step is operable to slide from a first position where the gauge step is extended to create a gauge step to support the product resting in the product dispensing assembly to a second position where the gauge step is retracted such that the gauge step does not support the product resting in the product dispensing assembly (col 8 L 1-21 ; FIG 6/12 )

(Re: cl 17) wherein the retractable gauge step comprises a plurality of detents operable to hold the gauge step in the first position (col 8 L 1-21; fig 6/12)

(Re: cl 18) wherein the retractable gauge step comprises a plurality of detents operable to hold the gauge step in the second position (col 8 L 1-21; fig 6/12)

(Re: cl 19) wherein the product dispensing assembly has a plurality of cutout slots and the retractable gauge step has a plurality of hooks, wherein the cutout slots and the hooks are coupled such that the gauge step and the dispensing assembly are substantially permanently affixed to each other (c7 L 1-65; FIG 6/12 )

(Re: cl 20) wherein the retractable gauge step is further Adaptable to being in a plurality of positions where the gauge step is extended to create a plurality of gauge steps to support the products resting in the product dispensing assembly (Col 7 L 1-65; FIG 6/12)

(Re: cl 21) wherein the retractable gauge step is further adaptable to being in a plurality of positions where the gauge step is retracted such that the gauge step does not support the products resting in the product dispensing assembly (Col 7 L 1-65; FIG 6/12)

(Re: cl 22) wherein the retractable gauge step is operable to slide from a plurality of positions where the gauge step is extended to create a plurality of gauge steps to support the product resting in the product dispensing assembly to a plurality of positions where the gauge step is retracted such that the gauge step does not support the products resting in the product dispensing assembly (Col 7 L 1-65; FIG 6/12).

5. Claim(s) 12-22 is/are rejected under 35 U.S.C. 102(b) as being anticipated by Hieb et al.

(US 4986615) which discloses all the claimed elements including:

(Re: cl 12, 1) A method for dispensing products from a vending machine, comprising the steps of: storing products in a product dispensing assembly; employing a retractable gauge step for supporting products stored in the product dispensing assembly; wherein the retractable gauge step is adaptable to dispense products of various sizes; and dispensing products from the dispensing assembly in a sequential manner (c6 L 1-31);

(Re: cl 13, 2) the retractable gauge step is substantially permanently affixed to the product dispensing assembly (fig 4-6)

(Re: cl 14, 3) the retractable gauge step adaptable to being in a first position where the gauge step is extended to create a gauge step to support the product resting in the product dispensing assembly (fig 4-6)

(Re: cl 15, 4) wherein the retractable gauge step is adaptable to being in a second position where the gauge step is retracted such that the gauge step does not support the product resting in the product dispensing assembly (fig 4-6)

(Re: cl 16, 5) wherein the retractable gauge step is operable to slide from a first position where the gauge step is extended to create a gauge step to support the product resting in the product

Art Unit: 3653

dispensing assembly to a second position where the gauge step is retracted such that the gauge step does not support the product resting in the product dispensing assembly (fig 4-6; c7 L 50-c8 L 28)

(Re: cl 17, 6) wherein the retractable gauge step comprises a plurality of detents operable to hold the gauge step in the first position (fig 4-6; c7 L 50-c8 L 28)

(Re: cl 18, 7) wherein the retractable gauge step comprises a plurality of detents operable to hold the gauge step in the second position (fig 4-6; c7 L 50-c8 L 28)

(Re: cl 19, 8) wherein the product dispensing assembly has a plurality of cutout slots and the retractable gauge step has a plurality of hooks, wherein the cutout slots and the hooks are coupled such that the gauge step and the dispensing assembly are substantially permanently affixed to each other (fig 3-6)

(Re: cl 20, 9) wherein the retractable gauge step is further adaptable to being in a plurality of positions where the gauge step is extended to create a plurality of gauge steps to support the products resting in the product dispensing assembly (holes & slots fig 3-4 ; c7 L 50-c8 L 28)

(Re: cl 21, 10) wherein the retractable gauge step is further adaptable to being in a plurality of positions where the gauge step is retracted such that the gauge step does not support the products resting in the product dispensing assembly (holes & slots fig 3-4 ; c7 L 50-c8 L 28)

(Re: cl 22, 11) wherein the retractable gauge step is operable to slide from a plurality of positions where the gauge step is extended to create a plurality of gauge steps to support the product resting in the product dispensing assembly to a plurality of positions where the gauge step is retracted such that the gauge step does not support the products resting in the product dispensing assembly (holes & slots fig 3-4 ; c7 L 50-c8 L 28).

6. Claims 1-5 and 9-16 and 20-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Wittern, Jr. et al. '293 (US 6302293 A) which discloses all the claimed elements including:

(Re: cl 1) A vending machine, comprising:

a housing for storing products to be dispensed; a product dispensing assembly comprising a dispenser for holding and dispensing products, wherein the dispenser has an open side and is mounted substantially horizontally within the housing and rotatable about an axis, wherein the dispenser uses a retractable gauge step adaptable to vend products of various sizes; a product chute for receiving products when dispensed by the dispenser; and a motor coupled to the dispenser for rotating the dispenser (c4 L 41-67; c5 L 50-61)

(Re: cl 2) the retractable gauge step is substantially permanently affixed to the product dispensing assembly (c5 L 1-51)

(Re: cl 3) the retractable gauge step adaptable to being in a first position where the gauge step is extended to create a gauge step to support the product resting in the product dispensing assembly (c5 L 1-51)

(Re: cl 4) wherein the retractable gauge step is adaptable to being in a second position where the gauge step is retracted such that the gauge step does not support the product resting in the product dispensing assembly (c6 L 41-51)

(Re: cl 5) wherein the retractable gauge step is operable to slide from a first position where the

Art Unit: 3653

gauge step is extended to create a gauge step to support the product resting in the product dispensing assembly to a second position where the gauge step is retracted such that the gauge step does not support the product resting in the product dispensing assembly (c10 L 19-57)

(Re: cl 9) the retractable gauge step is further adaptable to being in a plurality of positions where the gauge step is extended to create a plurality of gauge steps to support the products resting in the product dispensing assembly (c12 L 24-42)

(Re: cl 10) wherein the retractable gauge step is further adaptable to being in a plurality of positions where the gauge step is retracted such that the gauge step does not support the products resting in the product dispensing assembly (c12 L 24-42)

(Re: cl 11) the retractable gauge step is operable to slide from a plurality of positions where the gauge step is extended to create a plurality of gauge steps to support the product resting in the product dispensing assembly to a plurality of positions where the gauge step is retracted such that the gauge step does not support the products resting in the product dispensing assembly (c12 L 24-42)

(Re: cl 12) A method for dispensing products from a vending machine, comprising the steps of: storing products in a product dispensing assembly; employing a retractable gauge step for supporting products stored in the product dispensing assembly; wherein the retractable gauge step is adaptable to dispense products of various sizes; and dispensing products from the dispensing assembly in a sequential manner (c4 L 41-67; c5 L 50-61)

(Re: cl 13) the retractable gauge step is substantially permanently affixed to the product dispensing assembly (c5 L 1-51)

(Re: cl 14) the retractable gauge step adaptable to being in a first position where the gauge step is extended to create a gauge step to support the product resting in the product dispensing assembly (c5 L 1-51)

(Re: cl 15) wherein the retractable gauge step is adaptable to being in a second position where the gauge step is retracted such that the gauge step does not support the product resting in the product dispensing assembly (c6 L 41-51)

(Re: cl 16) wherein the retractable gauge step is operable to slide from a first position where the gauge step is extended to create a gauge step to support the product resting in the product dispensing assembly to a second position where the gauge step is retracted such that the gauge step does not support the product resting in the product dispensing assembly (c10 L 19-57)

(Re: cl 20) wherein the retractable gauge step is further Adaptable to being in a plurality of positions where the gauge step is extended to create a plurality of gauge steps to support the products resting in the product dispensing assembly (c12 L 24-42)

(Re: cl 21) wherein the retractable gauge step is further adaptable to being in a plurality of positions where the gauge step is retracted such that the gauge step does not support the products resting in the product dispensing assembly. (c12 L 24-42)

(Re: cl 22) wherein the retractable gauge step is operable to slide from a plurality of positions where the gauge step is extended to create a plurality of gauge steps to support the product resting in the product dispensing assembly to a plurality of positions where the gauge step is retracted such that the gauge step does not support the products resting in the product dispensing assembly (c12 L 24-42)

Art Unit: 3653

7. Claims 1-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Oden et al (US5529207) which discloses all the claimed elements including:

(Re: cl 1) A vending machine, comprising:

a housing for storing products to be dispensed 6;

a product dispensing assembly comprising a dispenser for holding and dispensing products, wherein the dispenser has an open side and is mounted substantially horizontally within the housing and rotatable about an axis ,

wherein the dispenser uses a retractable gauge step adaptable to vend products of various sizes (c3 L 52-c4 L 30);

a product chute for receiving products when dispensed by the dispenser ; and a motor coupled to the dispenser for rotating the dispenser (c3 L 52-c4 L 30);

(Re: cl 2) the retractable gauge step is substantially permanently affixed to the product dispensing assembly (c3 L 52-c4 L 30);

(Re: cl 3) the retractable gauge step adaptable to being in a first position where the gauge step is extended to create a gauge step to support the product resting in the product dispensing assembly (c3 L 52-c4 L 30; fig 4-6);

(Re: cl 4) wherein the retractable gauge step is adaptable to being in a second position where the gauge step is retracted such that the gauge step does not support the product resting in the product dispensing assembly (c3 L 52-c4 L 30; fig 4-6);

(Re: cl 5) wherein the retractable gauge step is operable to slide from a first position where the gauge step is extended to create a gauge step to support the product resting in the product dispensing assembly to a second position where the gauge step is retracted such that the gauge step does not support the product resting in the product dispensing assembly (c3 L 52-c4 L 30; fig 4-6);

(Re: cl 6) wherein the retractable gauge step comprises a plurality of detents operable to hold the gauge step in the first position (c3 L 52-c4 L 30; fig 4-6);

(Re: cl 7) the retractable gauge step comprises a plurality of detents operable to hold the gauge step in the second position (c3 L 52-c4 L 30; fig 4-6);

(Re: cl 8) wherein the product dispensing assembly has a plurality of cutout slots and the retractable gauge step has a plurality of hooks, wherein the cutout slots and the hooks are coupled such that the gauge step and the dispensing assembly are substantially permanently affixed to each other (c3 L 52-c4 L 30; fig 4-6);

(Re: cl 9) the retractable gauge step is further adaptable to being in a plurality of positions where the gauge step is extended to create a plurality of gauge steps to support the products resting in the product dispensing assembly (c3 L 52-c4 L 30; fig 4-6);

(Re: cl 10) wherein the retractable gauge step is further adaptable to being in a plurality of positions where the gauge step is retracted such that the gauge step does not support the products resting in the product dispensing assembly (c3 L 52-c4 L 30; fig 4-6);

(Re: cl 11) the retractable gauge step is operable to slide from a plurality of positions where the gauge step is extended to create a plurality of gauge steps to support the product resting in the product dispensing assembly to a plurality of positions where the gauge step is retracted such that the gauge step does not support the products resting in the product dispensing



Art Unit: 3653

assembly (c3 L 52-c4 L 30; fig 4-6);

(Re: cl 12) A method for dispensing products from a vending machine, comprising the steps of: storing products in a product dispensing assembly; employing a retractable gauge step for supporting products stored in the product dispensing assembly; wherein the retractable gauge step is adaptable to dispense products of various sizes; and dispensing products from the dispensing assembly in a sequential manner (c3 L 52-c4 L 30);

(Re: cl 13) the retractable gauge step is substantially permanently affixed to the product dispensing assembly (c3 L 52-c4 L 30);

(Re: cl 14) the retractable gauge step adaptable to being in a first position where the gauge step is extended to create a gauge step to support the product resting in the product dispensing assembly (c3 L 52-c4 L 30; fig 4-6);

(Re: cl 15) wherein the retractable gauge step is adaptable to being in a second position where the gauge step is retracted such that the gauge step does not support the product resting in the product dispensing assembly (c3 L 52-c4 L 30; fig 4-6);

(Re: cl 16) wherein the retractable gauge step is operable to slide from a first position where the gauge step is extended to create a gauge step to support the product resting in the product dispensing assembly to a second position where the gauge step is retracted such that the gauge step does not support the product resting in the product dispensing assembly (c3 L 52-c4 L 30; fig 4-6);

(Re: cl 17) wherein the retractable gauge step comprises a plurality of detents operable to hold the gauge step in the first position (c3 L 52-c4 L 30; fig 4-6);

(Re: cl 18) wherein the retractable gauge step comprises a plurality of detents operable to hold the gauge step in the second position (c3 L 52-c4 L 30; fig 4-6);

(Re: cl 19) wherein the product dispensing assembly has a plurality of cutout slots and the retractable gauge step has a plurality of hooks, wherein the cutout slots and the hooks are coupled such that the gauge step and the dispensing assembly are substantially permanently affixed to each other (c3 L 52-c4 L 30; fig 4-6);

(Re: cl 20) wherein the retractable gauge step is further Adaptable to being in a plurality of positions where the gauge step is extended to create a plurality of gauge steps to support the products resting in the product dispensing assembly (c3 L 52-c4 L 30; fig 4-6);

(Re: cl 21) wherein the retractable gauge step is further adaptable to being in a plurality of positions where the gauge step is retracted such that the gauge step does not support the products resting in the product dispensing assembly (c3 L 52-c4 L 30; fig 4-6);

(Re: cl 22) wherein the retractable gauge step is operable to slide from a plurality of positions where the gauge step is extended to create a plurality of gauge steps to support the product resting in the product dispensing assembly to a plurality of positions where the gauge step is retracted such that the gauge step does not support the products resting in the product dispensing assembly (c3 L 52-c4 L 30; fig 4-6).

Art Unit: 3653

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claim(s) 1-22 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over Hieb et al. (US 4986615) in view of Wittern, Jr. et al. '293 (US 6302293 A) wherein the former discloses the elements previously discussed and further discloses:

(Re: cl 1) A vending machine, comprising:  
a housing for storing products to be dispensed ;  
a product dispensing assembly comprising a dispenser for holding and dispensing products, wherein the dispenser has an open side and is mounted substantially horizontally within the housing,  
wherein the dispenser uses a retractable gauge step adaptable to vend products of various sizes; a product chute for receiving products when dispensed by the dispenser (c6 L 1-31);  
and a motor coupled to the dispenser for rotating the dispenser (fig 4-6)  
(Re: cl 2) the retractable gauge step is substantially permanently affixed to the product dispensing assembly (fig 4-6)  
col(Re: cl 3) the retractable gauge step adaptable to being in a first position where the gauge step is extended to create a gauge step to support the product resting in the product dispensing assembly (fig 4-6)  
(Re: cl 4) wherein the retractable gauge step is adaptable to being in a second position where the gauge step is retracted such that the gauge step does not support the product resting in the product dispensing assembly (fig 4-6)  
(Re: cl 5) wherein the retractable gauge step is operable to slide from a first position where the gauge step is extended to create a gauge step to support the product resting in the product dispensing assembly to a second position where the gauge step is retracted such that the gauge step does not support the product resting in the product dispensing assembly (fig 4-6; c7 L 50-c8 L 28)  
(Re: cl 6) wherein the retractable gauge step comprises a plurality of detents operable to hold the gauge step in the first position (fig 4-6; c7 L 50-c8 L 28)  
(Re: cl 7) the retractable gauge step comprises a plurality of detents operable to hold the gauge step in the second position (fig 4-6; c7 L 50-c8 L 28)

Art Unit: 3653

(Re: cl 8) wherein the product dispensing assembly has a plurality of cutout slots and the retractable gauge step has a plurality of hooks, wherein the cutout slots and the hooks are coupled such that the gauge step and the dispensing assembly are substantially permanently affixed to each other (fig 3-6)

(Re: cl 9) the retractable gauge step is further adaptable to being in a plurality of positions where the gauge step is extended to create a plurality of gauge steps to support the products resting in the product dispensing assembly (holes & slots fig 3-4 ; c7 L 50-c8 L 28)

(Re: cl 10) wherein the retractable gauge step is further adaptable to being in a plurality of positions where the gauge step is retracted such that the gauge step does not support the products resting in the product dispensing assembly (holes & slots fig 3-4 ; c7 L 50-c8 L 28)

(Re: cl 11) the retractable gauge step is operable to slide from a plurality of positions where the gauge step is extended to create a plurality of gauge steps to support the product resting in the product dispensing assembly to a plurality of positions where the gauge step is retracted such that the gauge step does not support the products resting in the product dispensing assembly (holes & slots fig 3-4 ; c7 L 50-c8 L 28).

Wittern, Jr. et al. discloses any elements not explicitly nor inherently taught by Hieb et al. including:

Rotatable dispenser rotatable about an axis, and a motor coupled to the dispenser for rotating the dispenser (c4 L 41-67;c5 L 50-61).

It would have been obvious at the time of the invention for Hieb et al. to use a motor to advance the product to dispensing as taught by Wittern, Jr. et al..

### ***Response to Amendment/Argument***

10. The applicant's arguments have been fully considered but they are unpersuasive in overcoming the rejections.

Applicant's arguments were effective in overcoming the rejections to claims 1-11 evidenced by Kovens et al.. The applicant's arguments have been fully considered but they are unpersuasive in overcoming the rejections to claims 12-22. In Kovens et al. , operation is effected by filling the machine with products, and the retractable gauge step is employed in

holding dispensate of the selected size in place assisting in dispensing in a sequential order. As method steps, claims 12-22 need method limitations to distinguish them from the prior art. Bolting in unutilized apparatus limitations as an appendix into the claimed steps does not distinguish the method steps from the prior art.

The applicant's arguments have been fully considered but they are unpersuasive in overcoming the rejections to claims 12-22. In Heib et al., operation is effected by filling the machine with products, and the retractable gauge step is employed in holding dispensate of the selected size in place assisting in dispensing in a sequential order. As method steps, claims 12-22 need method limitations to distinguish them from the prior art. Bolting in unutilized apparatus limitations as an appendix into the claimed steps does not distinguish the method steps from the prior art.

The applicant's arguments have been fully considered but they are unpersuasive in overcoming the rejections evidenced by Wittern, Jr. et al.. Wittern, Jr. et al. discloses a dispenser shown as element 16 in fig 2. Retractable flange guides are used in conjunction with the dispenser for regulating the dispensing of the articles. The flange is shaped with a stepped protrusions in the wall for holding assorted size dispensate. The Wittern, Jr. et al. details the dispenser as a rotatable (362, 362a on fig 12/14) at the bottom of the stack per the incorporation by reference of sister patent 5791516 (c1 L 19-22). A plurality of stepped locations are selectable at which the flanges may be placed. With Wittern, Jr. et al., operation is effected by filling the machine with products, and the retractable gauge step is employed in holding dispensate of the selected size in place assisting in dispensing in a sequential order.

The applicant's arguments have been fully considered but they are unpersuasive in overcoming the rejections Oden. Oden et al. discloses a rotatable dispenser shown as element SM in fig 2. Retractable flanges are used in conjunction with the rotatable dispenser for regulating the dispensing of articles. The flange is shaped with a stepped protrusion for holding the assorted size dispensate. A plurality of stepped locations are selectable at which the flanges may be placed. With Oden et al., operation is effected by filling the machine with products, and the retractable gauge step is employed in holding dispensate of the selected size in place assisting in dispensing in a sequential order.

The applicant's arguments have been fully considered but they are unpersuasive in overcoming the rejections evidenced by Hieb et al. in view of Wittern, Jr. et al.. As discussed, each discloses a structure meeting the claim scope of a retractable gauge step. Further, Wittern, Jr. et al. discloses a rotatable dispenser.

Contrary to applicant's arguments, the claimed apparatus invention does not have a dispenser having a retractable gauge step-rather the dispenser uses a retractable gauge step-the gauge step may be a separate component. Nor do applicant's drawings show the retractable gauge step as a subset of the rotatable dispenser assembly.

### ***Conclusion***

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after

Art Unit: 3653

the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Exmr. Michael E. Butler whose telephone number is (571) 272-6937.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick Mackey, can be reached on (571) 272-6919. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*MEB*  
*10/11/06*

  
PATRICK MACKEY  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2600